

MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT ("Agreement") is entered into as of January 1, 2023 (the "Agreement Date") by and between Hinderliter De Llamas and Associates (Hinderliter De Llamas and Associates (HdL) ("Consultant"), and the County of El Dorado ("Client"), which is located within the state of California (the "State").

WITNESSETH:

WHEREAS, Consultant is engaged in the business of providing consulting, software, and other services that help public agencies understand and maximize their collection of sales, use and transactions taxes, business license taxes, property and lodging taxes, and other revenues, as well as their delivery of public services (collectively, "Consultant's Business");

WHEREAS, Client desires to contract with Consultant to obtain one (1) or more of the services included within Consultant's Business (as provided for in Section 1) upon the terms and conditions contained in this Agreement;

WHEREAS, Consultant desires to contract with Client to render such services upon the terms and conditions contained in this Agreement;

NOW THEREFORE, in consideration of the covenants and promises contained herein, Client and Consultant mutually agree as follows:

1. Services.

1.1 Consultant shall perform those services included within Consultant's Business that are described in Exhibit A, marked "HdL Tax Administration Services and Fees," incorporated herein and made by reference a part hereof, referencing this Agreement and signed by Client and Consultant as of the Agreement Date or hereafter, upon the terms and conditions contained in this Agreement (including Exhibit A (such services are, collectively, the "Services"). In performing the Services, Consultant is acting as an independent contractor (and not as an agent or employee of Client).

1.2 Client acknowledges and agrees that any other public agency (including, without limitation, any participating government agency) located within or outside of the State (e.g., city, municipality, county, district, public authority or other political subdivision) may procure services for fees and other terms and conditions that are substantially similar to any of the Services, Fees and other terms and conditions set forth in this Agreement, provided that such other public agency executes a separate agreement with Consultant wherein the services rendered to such other public agency, the fees payable by such other public agency, and the other terms and conditions of such separate agreement are the responsibility of Consultant and such other public agency and not Client.

1.3 This Agreement does not limit the right of Consultant to enter into additional contracts with Client or to contract with third parties to provide them with merchandise or services of any kind whatsoever, including, but not limited to, services similar to the Services. During the Term of this Agreement, Client will not, directly or indirectly (except through Consultant), engage any third party to provide the Services or any services similar to the Services.

1.4 Deliverables shall be submitted via electronic file and Consultant shall produce the file using Microsoft (MS) Office 365 applications (specifically, MS Word and MS Excel). Signed reports shall be submitted in Adobe portable document format (PDF). All deliverables shall be submitted in the

language, format and design that are compatible with and completely transferable to Client's computer, and that are acceptable to Client Contract Administrator. Newer versions of software may be used and other types of software used for analytical purposes may be authorized if approved in advance of the submittal by Client's Contract Administrator. Consultant shall submit all deliverables to Client's Contract Administrator in accordance with completion time schedules identified in the individual Work Orders issued pursuant to this Agreement. Failure to submit the required deliverables in the format required shall be grounds for termination of the Agreement, as provided in Section 7, Term and Termination herein.

1.5 Upon completion or earlier termination of all services under this Agreement, or upon the completion or earlier termination of services provided in accordance with individual Work Orders issued pursuant to this Agreement, ownership and title to all reports, documents, specifications, estimates, compilations, photographs, videos, and any and all other materials or data produced or obtained as part of this Agreement will automatically be vested in Client without restriction or limitation on their use, and no further agreement will be necessary to transfer ownership to Client. Copies may be made for Consultant's records, but shall not be furnished to others without prior written authorization from Client's Contract Administrator. Such deliverables shall be deemed works made for hire and all rights in copyright therein shall be retained by Client. Consultant shall furnish Client all necessary copies of data, including data stored in electronic format, needed to complete the review and approval process of the services and deliverables provided under this Agreement.

1.6 For each work assignment, the specific services for each assignment shall be determined at a meeting, by email, or telephone conference between Client and Consultant. For each work assignment, Consultant shall provide a written quote to Client's Contract Administrator. Upon receipt and approval of each quote, Client's Contract Administrator will issue a separate written Work Order to Consultant for each work assignment identifying the description of the services to be performed, any required deliverables, including reports or other documents to be supplied in connection with the work assignment, a specific date by which the work shall be completed, and a not-to-exceed cost to complete the work. Consultant shall not commence work until receiving the written Work Order. No payment will be made for any work performed prior to approval and full execution of the Work Order or beyond expiration date of the Work Order, and no payment will be made for amounts in excess of the not-to-exceed amount of the Work Order.

The period of performance for Work Orders shall be in accordance with dates specified in each Work Order. No payment will be made for any work performed before or after the period of performance in the Work Order, unless Client's Contract Administrator and Consultant amend the Work Order.

Consultant shall perform the services and tasks required under this Agreement in a safe, professional, skillful, and workmanlike manner. Consultant is responsible for ensuring that its employees, as well as any subconsultant if applicable, perform the services and tasks required under this Agreement accordingly.

All of the services included in Exhibit A, or in the individual Work Orders issued pursuant to this Agreement, are the responsibility of Consultant unless specifically described as a task or item of work to be provided by Client.

2. **Fees.** As compensation for performing the Services, Client will pay Consultant the fees, costs, taxes, and, expenses as described in Exhibit A (individually and collectively these fees and costs are, the "Fees"). Consultant may perform the Services using professionals from its staff or Consultant's affiliated entities, and such Services shall be invoiced to Client under the same terms applicable to Consultant's staff. Consultant may increase the Fees from time to time (including, without limitation, as may be described in Exhibit A with thirty (30) days advance notice and written approval from Client's Contract Administrator. Other than a Fee increase as described in Exhibit A, Client may notify Consultant of a request that such Fee

increase be modified or revoked and, if Consultant fails to do so to Client's satisfaction within thirty (30) days after the receipt of such request, Client may terminate this Agreement without cause pursuant to Section 7.3. *During the term of the Agreement, any changes to the scope of services shall be deemed enforceable if such modification has been reduced to writing and has been agreed to and duly executed by both Parties.*

Notwithstanding any other provision of this Agreement to the contrary, payments to Consultant for travel, lodging, per diem, and mileage expenses, if applicable, for Consultant's claims for reimbursement shall not exceed the rates to be paid to Client employees under the current Client Board of Supervisor's Travel Policy in effect at the time the expenses are incurred. Any individual travel expense exceeding one hundred dollars (\$100) and any work requiring overnight stay must be approved in writing and in advance by the Contract Administrator or designee. Consultant is responsible for cancelling hotel rooms before the cancellation period ends and should record the cancellation number in case of disputes. Consultant shall not be reimbursed for "no-show" hotel charges unless there are unavoidable reasons for not cancelling the room and the Contract Administrator or designee has determined that the reasons are valid.

3. Invoices; Payment.

3.1 Consultant shall invoice Client for the Fees earned and/or incurred by Consultant in the individual Work Orders issued pursuant to this Agreement.

3.2 For services provided herein, including any deliverables that may be identified in the individual Work Orders issued pursuant to this Agreement, Client agrees to pay Consultant upon the satisfactory completion and Client's acceptance of work, in arrears. Payment shall be made within sixty (60) days following Client's receipt and approval of invoices identifying the services rendered. Itemized invoices shall follow the format specified by Client and shall reference this Agreement number and the Client-supplied Work Order number on their faces and on any enclosures or backup documentation. Copies of documentation attached to invoices shall reflect Consultant's charges for the specific services billed on those invoices. Consultant shall bill Client for only one (1) Work Order per invoice. Interest will begin to accrue on the sixty-first (61st) day following the invoice date on all unpaid balances at a rate of one and one-half percent (1 ½%) per month, or the maximum rate permitted by law, whichever is less. Payments will first be credited to interest and then to principal. In the event that Client disputes an invoice, only that portion so disputed in good faith will be withheld from payment, and the undisputed portion must be timely paid. Interest shall accrue on any disputed portion of the invoice not timely paid and will be payable immediately if the disputed invoice is resolved in favor of Consultant.

3.3 If Client fails to fully pay an invoice within sixty (60) days after the invoice date, Consultant may, after giving five (5) days' prior written notice to Client, suspend the rendering of Services under this Agreement until said invoice is paid in full, together with all interest that has accrued thereon. In the event of such a suspension of Services, Consultant shall have no liability to Client for any delays or damages arising therefrom.

4. Insurance. Consultant shall provide proof of a policy of insurance satisfactory to Client's Risk Management Division and documentation evidencing that Consultant maintains insurance that meets the following requirements:

4.1 Full Workers' Compensation and Employers' Liability Insurance covering all employees of Consultant as required by law in the State of California.

4.2 Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000 aggregate limit.

4.3 Automobile Liability Insurance of not less than \$1,000,000 is required in the event motor vehicles are used by Consultant in performance of the Agreement.

4.4 In the event Consultant is a licensed professional or professional consultant and is performing professional services under this Agreement, Professional Liability Insurance is required with a limit of liability of not less than \$1,000,000.

4.5 Consultant shall furnish a certificate of insurance satisfactory to Client's Risk Management Division as evidence that the insurance required above is being maintained.

4.6 The insurance will be issued by an insurance company acceptable to Client's Risk Management Division or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.

4.7 Consultant agrees that the insurance required herein shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Consultant agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and Consultant agrees that no work or services shall be performed prior to the giving of such approval. In the event Consultant fails to keep in effect at all times insurance coverage as herein provided, Client may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

4.8 The certificate of insurance must include the following provisions stating that:

4.8.1. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to Client; and

4.8.2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.

4.9 Consultant's insurance coverage shall be primary insurance in respect to Client, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by Client, its officers, officials, employees, or volunteers shall be in excess of Consultant's insurance and shall not contribute with it.

4.10 Any deductibles or self-insured retentions must be declared to and approved by Client. At the option of Client, either: The insurer shall reduce or eliminate such deductibles or self-insured retentions in respect to Client, its officers, officials, employees, and volunteers; or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

4.11 Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to Client, its officers, officials, employees, or volunteers.

4.12 The insurance companies shall have no recourse against the County of El Dorado, its officers, and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.

4.13 Consultant's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.

4.14 In the event Consultant cannot provide an occurrence policy, Consultant shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.

4.15 The certificate of insurance shall meet such additional standards as may be determined by the contracting Client department, either independently or in consultation with Client's Risk Management Division as essential for protection of Client.

5. Client Support.

5.1 Client will promptly provide in writing to Consultant all data and other information relating to or which may be necessary for Consultant's performance of the Services. Without limiting the foregoing, Client will keep Consultant informed on a timely basis in writing as to the existence and amendments of the laws, ordinances and/or regulations under which Consultant is performing the Services (including any adopted by Client). Consultant shall be permitted to rely on the accuracy, timeliness, and completeness of the information provided by Client, and in no event shall Consultant be liable to Client or others as a result of such reliance.

5.2 Client will examine all of Consultant's reports, specifications, notices, proposals, and other documents. In the event that Consultant asks for a decision from Client in order for Consultant to perform the Services, Client will render such decision in writing in a timely manner.

5.3 Promptly following any request from Consultant, Client will adopt and maintain in full force and effect resolutions in forms acceptable to Client and in accordance with applicable law authorizing Consultant to examine the confidential sales tax and other relevant records of Client throughout the Term and, for so long as any Fees are still accruing pursuant to this Agreement, after the Term.

5.4 Client will assist Consultant in obtaining such licenses, permits, and approvals as may be required by law for performing the Services, and Client will pay all fees, assessments, and taxes related to the application, issuance, and maintenance thereof.

5.5 The Services do not include services to support, prepare, document, bring, respond to subpoenas, act as a witness, defend or otherwise assist in litigation undertaken or defended by Client, which Consultant may be required by legal process or otherwise or requested by Client to provide (collectively, "Litigation Services"). In this regard, if Consultant agrees with Client or is otherwise required to perform Litigation Services, Client will promptly pay or reimburse Consultant for all of Consultant's costs and expenses related to Litigation Services (including, without limitation, Consultant's attorneys' fees and costs) at Consultant's actual cost, plus ten percent (10%) thereof (all of which are deemed to be additional Fees). This paragraph does not apply to any attorneys' fees, costs, Consultant time, or litigation services that are the responsibility of Consultant under Section 8.1.

6. Confidentiality; Software Use and Warranty; Records.

6.1 Consultant shall comply with the requirements of the applicable laws, ordinances, and/or regulations concerning the confidentiality of tax records. Consultant may publicly state that it performs Services for Client. Consultant shall maintain the confidentiality of all data Client provides to Consultant and use the data only for the benefit of Client and in furtherance of the Agreement.

6.2 As used herein, the term "proprietary information" means all information, techniques, processes, services or material that has or could have commercial value or other utility for Consultant or in Consultant's Business, including without limitation, (i) software, computer or data processing programs; (ii) data processing applications, routines, subroutines, techniques or systems; (iii) desktop or web-based software; (iv) audit, tax or fee collection/administration or business processes, methods or routines; (v) marketing plans, analyses and strategies; (vi) materials, techniques and intellectual property used; and (vii) the Software and the Software's documentation. Except as otherwise required by law, Client must hold in confidence and may not use (except as expressly authorized by this Agreement) or disclose to any other party any proprietary information provided, learned of or obtained by Client in connection with this Agreement. The terms of this Section 6.2 do not apply to information that is public information; provided, however, that proprietary information will not qualify as public information if it became public due to Client's (or its employees' or agents') disclosure.

6.3 If access to any software which Consultant owns is provided to Client as part of the Services under this Agreement (including, without limitation, if Client chooses to subscribe to such software and/or related reports as part of the Services pursuant to this Agreement) (such Consultant-owned software is, collectively, the "Software"), Consultant hereby provides a limited, non-exclusive, non-transferable license to Client (including such of Client's staff as may be designated from time to time by Client and approved by Consultant in writing) to use the Software pursuant to and during the Term of this Agreement.

6.4 The Software must only be used by such authorized Client staff, and Client must not sublicense, sublet, duplicate, modify, decompile, reverse engineer, disassemble, or attempt to derive the source code of the Software. The license granted hereunder does not imply ownership by Client or any of Client's staff of the Software nor any rights of Client or any of Client's staff to sublicense, transfer or sell the Software, or rights to use the Software for the benefit of others. Client may not create (or allow the creation of) any derivative work or product based on or derived from the Software or the Software's documentation, nor modify (or allow the modification of) the Software or the Software's documentation without the prior written consent of Consultant. In the event of a breach of this provision (and without limiting Consultant's remedies), such modification, derivative work or product based on the Software or the Software's documentation is hereby deemed assigned to Consultant. Upon termination of this Agreement or this Software license, this Software license will be deemed to have expired and Client must immediately deactivate, cease using and remove, delete and destroy all the Software (including, without limitation, from Client's computers and network). Consultant warrants that the Software will perform in accordance with the Software's documentation.

6.5 Notwithstanding anything to the contrary in this Agreement (including Exhibit A hereto), if access to any software which Consultant does not own is provided to Client as part of the Services pursuant to this Agreement (including pursuant to Exhibit A hereto), Client hereby agrees (i) to comply with all of the terms and conditions imposed on Client's access to such software (including, without limitation, by Consultant, such software's owner, and pursuant to applicable law), and (ii) Consultant has no obligation during the Term of this Agreement or thereafter to provide Client with access to such software.

6.6 All documents, preliminary drafts, communications and any and all other work product related to the Services and provided by Consultant to Client either in hard copy or electronically are the joint property of Client and Consultant while this Agreement is in effect. Upon termination of this Agreement the requirements of Section 1.5 shall be in full force and effect. This does not include the Software or any other software, any programs, any methodologies or any systems used in the creation of such work product, nor does it include any drafts, notes or internal communications prepared by Consultant in the course of performing the Services that were not otherwise provided to Client in either hardcopy or

electronic form, all of which may be protected by Consultant or third party copyrights or other intellectual property and remain Consultant's or such third parties' exclusive property (as the case may be). It is possible that any documents, drafts, communications or other work product provided to Client may be alleged to be public records under applicable law and/or may be discoverable through litigation. Well in advance of when Client may disclose such information in response to any request for public records, Client must notify Consultant in writing about the request. Consultant shall be solely responsible for applying for any potential exemption from disclosure that may exist under applicable law and providing Client with evidence of approved exemption.

6.7 Subject to applicable law, Consultant is responsible for retaining all final documents and other final work product related to the Services for a period of not less than three (3) years from the date provided to Client. Retention of any other documents, preliminary drafts, communications, and any and all other work product provided to Client by Consultant is the responsibility of Client. Consultant has no responsibility to retain any drafts, notes, communications, emails, or other writings created or received by Client in the course of performing the Services (other than the final documents and other final work product related to the Services and provided to Client for the term of years referenced above).

6.8 Consultant acknowledges that if total compensation under this Agreement is greater than \$10,000.00, this Agreement is subject to examination and audit by the California State Auditor for a period of three (3) years, or for any longer period required by law, after final payment under this Agreement, pursuant to California Government Code § 8546.7. In order to facilitate these potential examinations and audits, Consultant shall maintain, for a period of at least three (3) years, or for any longer period required by law, after final payment under the Agreement, all books, records, and documentation necessary to demonstrate performance under the Agreement.

7. Term and Termination.

7.1 The initial term of this Agreement commences as of the Agreement Date and, unless terminated earlier pursuant to any of this Agreement's express provisions, will continue in effect until twelve (12) months from such date (the "Initial Term"). This Agreement will automatically renew for successive twelve (12) month terms unless earlier terminated as set forth in Section 7.2 or 7.3 or either party gives the other party written notice of non-renewal at least one hundred twenty (120) days prior to the expiration of the then-current term (each a "Renewal Term" and, collectively, together with the Initial Term, the "Term").

7.2 This Agreement or any Work Order issued pursuant to this Agreement, may be terminated by either party for cause upon not less than forty-five (45) days' prior written notice given to and received by the other party, if the other party has materially breached this Agreement through no fault of the notifying party and fails to (i) commence correction of such material breach within thirty (30) days of receipt of the above-referenced written notice and (ii) diligently complete the correction thereafter.

7.3 In addition, either party may terminate this Agreement or any Work Order issued pursuant to this Agreement, without cause upon not less than one hundred twenty (120) days' prior written notice to the other party.

7.4 On termination, Client will pay Consultant for all Fees and other compensation (including for Litigation Services) earned and/or incurred through the termination date and will thereafter timely pay Consultant for all other Fees and compensation to which Consultant may be entitled pursuant to this Agreement and any Work Orders issued pursuant to this Agreement (Exhibit A hereto).

7.5 The parties to this Agreement recognize and acknowledge that Client is a political subdivision of the State of California. As such, Client is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment, or services not budgeted in a given fiscal year. It is further understood that in the normal course of Client business, Client will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, Client shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products, or equipment subject herein. Such notice shall become effective upon the adoption of a final budget, which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and Client released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce or order a reduction in the budget for any Client department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of Client, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

8. Indemnification.

To the fullest extent permitted by law, Consultant shall defend at its own expense, indemnify, and hold the Client harmless, its officers, employees, agents, and volunteers, against and from any and all liability, claims, suits, losses, damages, or expenses of every name, kind and description, including attorney's fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, Client employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the acts or omissions of Consultant or its officers, agents, or employees in rendering the services, operations, or performance hereunder, except for liability, claims, suits, losses, damages or expenses arising from the sole negligence or willful acts of the Client, its officers and employees, or as expressly prescribed by statute. This duty of Consultant to indemnify and save Client harmless includes the duties to defend set forth in California Civil Code Section 2778.

9. Liability Limitations; Governing Law; Dispute Resolution.

9.1 To the maximum extent permitted by law:

9.1.1 Except for Consultant's gross negligence or willful misconduct in connection with the performance of its obligations under this Agreement, Client's sole and exclusive remedies for any breaches of Consultant's obligations under this Agreement (including, without limitation, for any breaches relating to the Services or the Software, including any breaches of warranty, express or implied) (i) are limited to making reasonable and necessary repairs, replacements or corrections without additional cost to the Client, and (ii) will not exceed, under any circumstances, the amount of the Fees paid by Client to Consultant for the twelve-month (12) period prior to the alleged breaches, calculated without reference to any payments constituting the payment of costs or expenses. All amounts paid to Consultant hereunder are deemed first to be for the reimbursement of costs or expenses and then any excess will be regarded as payments for other portions of the Fees under this Agreement. Any references to breaches of this Agreement will include any supplements, additions or amendments to this Agreement.

9.1.2 Except as may otherwise be expressly set forth in this Agreement, Consultant makes no warranty of any kind with respect to the Services or the Software, express or implied.

Consultant hereby disclaims all other warranties, express or implied, including the implied warranties of merchantability, fitness for a particular purpose, title and noninfringement. Consultant disclaims all warranties and responsibility for third party software.

9.1.3 In no event shall any of Consultant Group be liable for any lost revenues or lost profits, or any special, incidental, or consequential damages of any nature whatsoever, even if such restrictions deprive one or more remedies of their essential purpose. This damage exclusion is independent of any remedies provided for herein.

9.1.4 None of Consultant Group shall have any Liability (whether direct or indirect, in contract or tort or otherwise) related to, arising out of, or in connection with this Agreement or to any of Client Group acting on any advice given or opinion rendered by any of Consultant Group, except to the extent that such Liability is found by a court of competent jurisdiction in a judgment which has become final and that it is no longer subject to appeal or review to have resulted solely from such Consultant Group's willful misconduct or gross negligence.

9.1.5 No claim may be brought by Client against any one or more of Consultant Group arising out of this Agreement (including, without limitation, in connection with the Services or the Software) more than one (1) year after the date on which such claim arose (regardless of the date when Client may have discovered a basis for the claim).

9.1.6 Client acknowledges that this Agreement is with Consultant in its capacity as a corporation or a limited liability company, and Client agrees that in no event will it seek to hold any of the Consultant Group (other than Consultant) responsible for any Liabilities.

9.1.7 Nothing in this Section 9.1 and all subsections within it shall limit Consultant's obligations to defend and indemnify the Client under Section 8.

9.2 The law of the State will govern the validity of this Agreement, its interpretation and performance, and any other claims related to it, without regard to the State's conflict of laws rules. Venue for any legal action arising out of this Agreement will be proper only in the State courts or the federal courts located within the State. The parties hereby submit to the exclusive jurisdiction of such courts and waive any other venue to which either party might be entitled by domicile or otherwise.

9.3 If either party is required to bring legal action to enforce its rights under this Agreement or as the result of a breach of this Agreement, the costs and expenses of the prevailing party, including reasonable attorneys' fees, will be paid by the non-prevailing party.

9.4 A breach of this Agreement by either party may cause the other party hereto irreparable harm, the amount of which may be difficult to ascertain, and therefore such other party will have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any further breach and for such other relief as such other party may deem appropriate. Such right is in addition to the remedies otherwise available to such other party at law or in equity. The parties hereto expressly waive the defense that a remedy in damages will be adequate and any requirement in an action for specific performance or injunction hereunder for the posting of a bond.

10. General Legal Provisions.

10.1 Authorization to Proceed. Agreement and Exhibit A must be signed by both Client and Consultant before such will be binding on the parties hereto.

10.2 Force Majeure. Neither party will be liable for any delay, failure to perform, or omission under this Agreement that is due to any cause that it is beyond its control, not due to its own negligence, and cannot be overcome by the exercise of due diligence. In that event, the affected party will:

10.2.1. Promptly give written notice to the other of the fact that it is unable to so perform and the cause(s) that is beyond its control.

10.2.2. Once the cause(s) has ceased, provide written notice to the other party and immediately resume its performance under this Agreement.

For purposes of this Article, "cause that is beyond its control" includes labor disturbances, riots, fires, earthquakes, floods, storms, lightning, epidemics, war, disorders, hostilities, expropriation or confiscation of properties, failure of and delays by carriers, interference by civil or military authorities, whether legal or de facto, and whether purporting to act under some constitution, decree, or law, or otherwise, or acts of God.

10.3 Amendment; Waiver. Any provisions of this Agreement (including, without limitation, Exhibit A or provisions within Exhibit A) may be amended or terminated if in writing and signed by both Client and Consultant. No waiver by any party of any default, misrepresentation or breach of warranty or covenant hereunder, whether intentional or not, will be deemed to be valid unless acknowledged by such party in writing, and such waiver will not extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

10.4 Severability and Survival. If any provision in this Agreement is held illegal, invalid or unenforceable, the enforceability of the remaining provisions will not be impaired thereby. Notwithstanding any other provisions of this Agreement (including, without limitation, Section 7), Sections 3, 5.5, 6, 7, 8, 9 and 10 will survive the termination of this Agreement.

10.5 No Third-Party Beneficiaries; Services Limited to Agreement. Except as set forth in Section 8, this Agreement gives no rights or benefits to anyone other than Client and Consultant and has no third-party beneficiaries. The Services to be performed for Client by Consultant are defined solely by this Agreement (including Exhibit A), and not by any other contract or agreement that may be associated with performing the Services.

10.6 Assignment. This is a bilateral personal services agreement. Neither party will have the power to or will assign any of the duties or rights or any claim arising out of or related to this Agreement, whether arising in tort, contract or otherwise, without the written consent of the other party. Any unauthorized assignment is void and unenforceable. This Agreement is binding on the successors and assigns of the parties hereto. Notwithstanding anything to the contrary, Consultant may, from time to time, utilize one or more third parties to provide certain of the Services (including, but not limited to, as may be set forth in Exhibit A).

10.7 Notices. All notices under this Agreement must be in writing and will be deemed to have been given when such notice is received (i) from United States Postal Service First Class Certified Mail, Return Receipt Requested, (ii) by courier service, or (iii) by email; provided, however, that notices received on a weekend or holiday or on a business day after 4:00 p.m. local time will be deemed to have been received on the next business day. Notices will, unless another address is specified in writing, be sent to the addresses indicated below (each of which must include a street address and an email address): 120 S State College Blvd, Suite 200, Brea, CA 92820 Consultant: Hinderliter De Llamas and Associates (HdL Software, LLC), Attn: George Bonnin, Email: gbonnin@hdlcompanies.com; and Client:

To Client:

County of El Dorado
Treasurer-Tax Collector Department
360 Fair Lane
Placerville, California 95667

Attn.: Cami Roberts
cami.roberts@edcgov.us
Assistant Treasurer-Tax Collector

With a copy to:

County of El Dorado
Chief Administrative Office
330 Fair Lane
Placerville, California 95667

Attn.: Michele Weimer
michele.weimer@edcgov.us
Procurement and Contracts Manager

or to such other location as Client directs.

10.8 Entire Agreement; Conflict. This Agreement (which includes Exhibit A, or amendments dated as of the Agreement Date or hereafter, including without limitation, amendments of the main body of this Agreement that may add to, subtract from, modify or clarify the Term, the scope of Services and/or the amount of Fees) constitutes the entire agreement between the parties and supersedes any prior understandings, agreements, or representations by or between the parties, written or oral, to the extent they relate in any way to the subject matter hereof. Should there ever be a conflict between the terms and conditions of Exhibit A, and the remainder of this Agreement as set forth in the main body of this Agreement, the terms and conditions of the remainder of this Agreement as set forth in the main body of this Agreement will prevail and be controlling; provided, however, that should there ever be a conflict between the terms and conditions of this Agreement (including Exhibit A) and (i) any amendments hereof, the terms and conditions of the amendments hereof will prevail and be controlling.

10.9 Counterparts; Electronic Signatures; Authority. This Agreement may be signed in any number of counterparts, each of which will constitute an original and all of which, when taken together, will constitute one agreement. Any signed signature pages of this Agreement transmitted by email or other electronic means in a portable document format (PDF) or other clear and visible electronic format will have the same legal effect as an original. Each of the persons signing on behalf of a party hereto represents that he or she has the authority to sign this Agreement on such party's behalf.

10.10 No Adverse Construction. Both parties acknowledge having had the opportunity to participate in the drafting of this Agreement. This Agreement will not be construed against either party based upon authorship. The section headings contained in this Agreement are inserted for convenience only and will not affect in any way the meaning or interpretation of this Agreement.

10.11 Contract Administrator. The Client Officer or employee with responsibility for administering this Agreement is Cami Roberts, Assistant Treasurer-Tax Collector, or successor.

10.12 Conflict of Interest. The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and the Political Reform Act of 1974 (Section 87100 et seq.), relating to conflict of interest of public officers and employees. Individuals who are working for Consultant and performing work for Client and who are considered to be consultant within the meaning of Title 2, California Code of Regulations, Section 18700.3, as it now reads or may thereafter be amended, are required to file a statement of economic interest in accordance with Client's Conflict of Interest Code. Client's Contract Administrator shall at the time this Agreement is executed make an initial determination whether or not the individuals who will provide services or perform work pursuant to this Agreement are consultants within the meaning of the Political Reform Act and Client's Conflict of Interest Code.

Statements of economic interests are public records subject to disclosure under the California Public Records Act.

Consultant covenants that during the term of this Agreement neither it, or any officer or employee of Consultant, has or shall acquire any interest, directly or indirectly, in any of the following:

10.12.1. Any other contract connected with, or directly affected by, the services to be performed by this Agreement.

10.12.2. Any other entities connected with, or directly affected by, the services to be performed by this Agreement.

10.12.3 Any officer or employee of Client that are involved in this Agreement.

If Consultant becomes aware of a conflict of interest related to this Agreement, Consultant shall promptly notify Client of the existence of that conflict, and Client may, in its sole discretion, immediately terminate this Agreement by giving written notice of termination specified in Section 7, Term and Termination.

10.13 California Residency (Form 590). If Consultant is a California resident, Consultant must file a State of California Form 590, certifying its California residency or, in the case of a limited liability company or corporation, certifying that it has a permanent place of business in California. Consultant will be required to submit a Form 590 prior to execution of this Agreement, or Client shall withhold seven (7) percent of each payment made to Consultant during the term of this Agreement. This requirement applies to any agreement/contract exceeding \$1,500.

10.14 County Payee Data Record Form. All independent contractors or corporations providing services to Client who do not have a Department of the Treasury Internal Revenue Service Form W-9 (Form W-9) on file with Client must file a Client Payee Data Record Form with Client.


10.15 Business License. Client's Business License Ordinance provides that it is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of El Dorado County without possessing a Client business license unless exempt under Client Ordinance Code Section 5.08.070. Consultant warrants and represents that it shall comply with all of the requirements of Client's Business License Ordinance, where applicable, prior to beginning work under this Agreement and at all times during the term of this Agreement.

10.16 Licenses. Consultant hereby represents and warrants that Consultant and any of its subconsultants employed under this Agreement has all the applicable licenses, permits, and certifications that are legally required for Consultant and its subconsultants to practice its profession or provide the services or work contemplated under this Agreement in the State of California. Consultant and its subconsultants shall obtain or maintain said applicable licenses, permits, or certificates in good standing throughout the term of this Agreement.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement through their duly authorized representatives as of the Agreement Date.

CONSULTANT:

Hinderliter De Llamas & Associates (HdL Software, LLC)

By: 
Andrew Nickerson (Dec 15, 2022 10:46 PST)
Name: R. Andrew Nickerson
Its: President

Dated: 12/15/2022

By: *Robert Gray*

Name: Robert Gray
Its: Member

Dated: 12/15/2022

CLIENT:

County of El Dorado

By: *Laura Schwartz*
Laura Schwartz (Dec 16, 2022 14:20 PST)
Purchasing Agent
Chief Administrative Office
"County"

Dated: 12/16/2022

MW

Exhibit A

HdL Tax Administration Services and Fees Local Tax Software Maintenance

SERVICES

Consultant will provide the following Maintenance Services relative to Consultant's local tax software solution.

1. Software Support

- 1.1. **Client Support** - Consultant will provide Client's users no charge support by telephone, email and the web during the term of this Agreement. In the United States support is available as follows: For customer support between the hours of 8:00 am and 5:00 pm Pacific time, Monday through Friday, email support@hdlcompanies.com or call (909) 861-4335 and ask for software support. For urgent off hours support before 8:00 am or after 5:00 pm Pacific time, Monday through Friday (or anytime Saturday), email 911@hdlcompanies.com and Consultant's on call support personnel will be notified. Please only include your name, agency and contact # in emails to 911@hdlcompanies.com. You will be contacted as soon as possible.
- 1.2. **Response Time** – In the event that Client encounters an error and/or malfunction whereby the software does not conform to expected behavior in accordance with the software design, Consultant will assign one of the following severity levels and render support services in a timely manner consistent with the urgency of the situation.
 - 1.2.1. **Severity Level 1** – a critical problem has been encountered such that the software is essentially inoperable and without a reasonable workaround. Consultant will respond within one (1) business hour to diagnose the problem. A response is defined as an email or call to the Client's designated support contact. Consultant and Client will work diligently and continuously to correct the problem as quickly as possible.
 - 1.2.2. **Severity Level 2** – a problem has been encountered that does not prevent use of the software, but the software is not operating correctly. Consultant will diagnose the problem within 48 hours and advise Client of any available work-around. Upon Consultant's confirmation that the software is not operating correctly, Consultant will provide a software update to repair the defect and confirm with Client that the update resolved the issue.
 - 1.2.3. **Severity Level 3** – a minor problem has been encountered. The software is usable but could be improved by correction of a minor defect or addition of a usability enhancement. HdL will assess the request within fifteen (15) business days and, depending on priorities, schedule a software update for a future release, advise County that the request will not be implemented, or offer the option of implementing the request as a custom software enhancement at additional cost.
- 1.3. **Support Policy Regarding Reports** - Consultant will assist with modifications to reports as needed during the term of this agreement. Typical report modifications require 7 to 10 business days to complete. Very complex reports or reports required in a very short time frame may incur development costs, in which case an estimate will be provided for approval before the work is begun.
- 1.4. **Software Upgrades** - Except to the extent that upgrades of the software include new modules or features not previously offered as part of the software as of the date hereof, Client is entitled to upgrades of the software within the terms of this Agreement. Though rare, additional costs may apply depending on the extent of the upgrade. Potential additional costs include training, consulting, configuration, or other requested services.

- 1.5. **Outside Connections to Consultant Database** – Consultant’s software relies on the integrity of the database to operate properly. As such, it is critical that any outside connection to the database be implemented with Consultant’s full knowledge and participation. Only “read only” connections will be established to Consultant’s database. No modifications will be made to the Consultant database, including database/table design and data content. Any repair work necessary due to violations of the above items will not be covered by the Software Use Fee, and as such will be billable to the client on a time and material basis. The Client shall contact Consultant for instructions if any added functionality is required, including reading additional data or writing to the Consultant database.
- 1.6. **Out of Scope Support** – Client agrees to pay additional hourly fees according to Consultant’s then current hourly rates if the Client desires Consultant’s assistance for matters which are not caused by any defects in Consultant’s software.
- 1.7. **Client Responsibilities**
 - 1.7.1. As a condition to its receipt of the Service, Client shall execute and deliver any and all applications, agreements, certifications or other documents required by Networks or other third parties whose consent or approval is necessary for the processing of Transactions. “Network” is an entity or association that operates, under a common service mark, a system which permits participants to authorize, route, and settle Transactions among themselves, including, for example, networks operated by VISA USA and Mastercard, Inc., NYCE Corporation, American Express, and Discover.
 - 1.7.2. Client represents, warrants, and agrees that it does and will comply with applicable Laws and regulations and Network rules, regulations or operating guidelines. Client shall notify Consultant in writing as soon as possible in the event a claim is either threatened or filed against Client by any governmental organization having jurisdiction over Client or a Customer related to the Service. Client shall also notify Consultant in writing as soon as possible in the event a claim is either threatened or filed against Client relating to Transactions or the Services or a fine or other penalty is assessed or threatened relating to Transactions or the Services.
 - 1.7.3. Client represents, warrants and agrees that it is and will continue to be in full compliance with all applicable requirements of the Client Information Security Program of VISA, the Site Data Protection Program of MasterCard, and similar programs of other Networks, and any modifications to such programs that may occur from time to time. Upon the request of Consultant, Client shall provide Consultant with documentation reasonably satisfactory to Consultant verifying compliance with this Section.
 - 1.7.4. Client hereby grants Consultant the full right, power and authority to request, receive and review any Data or records reflected in a Transaction report. Client represents and warrants that it has the full right and authority to grant these rights.

FEES

2. Recurring Costs

<i>Item</i>	<i>Price</i>	<i>Comments</i>
<i>Software Use and HdL Hosting Services Fee</i>	19,296.80	Fee includes the software annual use fee and the HdL hosting services fee + CPI. Billed annually. 12 remote licenses.

- 2.1.1. **Software Use Fee** – Software Use Fee is billed annually and provides for ongoing customer support and updates to the software. Fee will be increased as of January 1st of each calendar year with reference to the 12-month percent change in the most recently published annual Consumer Price Index for All Urban Consumers (CPI-U), West Region, as reported by the U.S. Bureau of Labor Statistics (the “CPI Change”). Each annual increase in the Fees will be equal to the greater of two percent (2%) or the actual CPI Change and the lesser of ten percent (10%) or the actual CPI Change. For example, if the actual CPI Change is 1.5%, then the annual increase will be 2%, if the actual CPI Change is 3.5%, then the annual increase will be 3.5%, and if the actual CPI Change is 12%, then the annual increase will be 10%.
- 2.1.2. **Software Hosting Services** – The fee for software hosting services is billed annually in advance, along with the software use fee. Fee may be periodically revised, with three (3) months advance notice to Client, to account for changes in market costs related to hosting, such as internet bandwidth, power, security, and related equipment or services costs.
- 2.1.3. **Customizing Services** – The Software is a customizable off the shelf system (COTS), and has been designed to meet certain issues faced by government entities. Should the need occur, Consultant is available to provide custom enhancements to the Software on a Programmer hourly Fee and material basis. No such Services shall be performed without Client’s prior written approval.
- 2.1.4. **Hourly Fees** - Fees for performing the hourly Services described above and as may otherwise be provided pursuant to this Exhibit A shall be based on the following initial hourly rates: (i) Principal - \$325; (ii) Programmer - \$295; (iii) Senior Analyst - \$245; and (iv) Analyst - \$195.

3. Payment Schedule

- 3.1. Any travel and lodging expenses are billed at the current Board of Supervisor’s Travel Policy. Such expenses shall be due within 30 days of the billing date.
- 3.2. Recurring software service fees will be invoiced each year on the anniversary of the effective date of the Agreement, and shall be due within 30 days of the invoice date.

IN WITNESS WHEREOF, the parties hereto have entered into this Exhibit A to the Agreement for Services #6972 through their duly authorized representatives as of January 1, 2023.

CONSULTANT:

Hinderliter De Llamas and Associates

By: 
Andrew Nickerson (Dec 15, 2022 10:46 PST)
R. Andrew Nickerson
Its: President


Hinderliter De Llamas and Associates

By: *Robert Gray*

Robert Gray
Its: Member

CLIENT:

El Dorado County, CA

By: 
Laura Schwartz (Dec 16, 2022 14:20 PST)
Purchasing Agent
Chief Administrative Office
"County"
MW